

Message

From: Wilson, Eric [Wilson.EricJ@epa.gov]
Sent: 12/2/2021 3:17:09 PM
To: James Bruno (jbruno@cq-law.com) [jbruno@cq-law.com]
CC: Zizila, Frances [Zizila.Frances@epa.gov]
Subject: FW: Syncon Resins Superfund Site: EPA Settlement Proposal

Mr. Bruno:

EPA is eager to conclude negotiations to resolve our respective liens on the Syncon Resins Site property. Please let us know when we can expect a counterproposal from the Town of Kearny in response to EPA's February 26, 2021 settlement proposal.

Eric Wilson
Deputy Director for Enforcement and Homeland Security
Superfund & Emergency Management Division
U.S. Environmental Protection Agency Region 2
212-637-4309 (office)
732-236-4940 (cell)

From: James P. Bruno <jbruno@cq-law.com>
Sent: Friday, October 15, 2021 11:58 AM
To: Zizila, Frances <Zizila.Frances@epa.gov>
Cc: Time Matters <TM@cq-law.com>
Subject: RE: Syncon Resins Superfund Site: EPA Settlement Proposal

My apologies-----vacation schedules and focus on other pressing matters have delayed review of this by the Town I will try to be back to you within the next week.

From: Zizila, Frances <Zizila.Frances@epa.gov>
Sent: Tuesday, October 12, 2021 11:00 AM
To: James P. Bruno <jbruno@cq-law.com>
Subject: RE: Syncon Resins Superfund Site: EPA Settlement Proposal

Mr. Bruno,

I am following up on my last email to you concerning the Syncon Resins Site. Please see below.

Thank you,
Frances

From: Zizila, Frances
Sent: Monday, August 30, 2021 6:28 PM
To: James P. Bruno <jbruno@cq-law.com>
Subject: RE: Syncon Resins Superfund Site: EPA Settlement Proposal

Mr Bruno,

Thank you for your response below on the NJ DEP's conditions. Could you kindly let us know when we can expect the Town of Kearny's counterproposal?

Frances

From: James P. Bruno <jbruno@cq-law.com>

Sent: Friday, July 16, 2021 11:48 AM

To: Kandil, Shereen <Kandil.Shereen@epa.gov>; Haymes, David (DEP) <David.Haymes@dep.nj.gov>; Louis Karagias <Louis.Karagias@law.njoag.gov>; Oconnell, Kimberly <OConnell.Kim@epa.gov>; Mellott, Deborah <Mellott.Deborah@epa.gov>; Kratina, Kevin (DEP) <Kevin.Kratina@dep.nj.gov>; Defeo, Frank (DEP) <Frank.Defeo@dep.nj.gov>; Abels, Jeanette <Jeanette.Abels@dep.nj.gov>; susan@mccurrielaw.com; Mayor Alberto Santos <mayor@kearnynj.org>; Saghafi, Farnaz <Saghafi.Farnaz@epa.gov>; Baxter, Pamela <baxter.Pamela@epa.gov>; Kloo, Ken <Ken.Kloo@dep.nj.gov>; Zizila, Frances <Zizila.Frances@epa.gov>
Cc: Wilson, Eric <Wilson.EricJ@epa.gov>; Time Matters <TM@cq-law.com>
Subject: RE: Syncon Resins Superfund Site: EPA Settlement Proposal

Shereen and Frances:

Thank you for following up with the Town on this on behalf of the USEPA.

We compared what the Town would receive under USEPA's last offer against what the Town would have received under the original proposal. That review indicates that, under the latest proposal, the Town's share would be significantly less if the net sale proceeds exceed \$25M. We think that this is likely because warehouse land in this area is selling for \$3M-\$4M an acre, and this site is 14 acres (although we don't know how many acres are in fact buildable). We need to take a closer look at this to offer a counterproposal, but we wanted to respond to your latest inquiry as to whether the Town accepts the last USEPA proposal.

As to the NJDEP's 2 conditions:

- the Town agrees that when it sells the property to a Redeveloper, the Redeveloper must assume future O&M costs.
- the 2 year time limit to sell the property will be tight, because we anticipate that the foreclosure could take approximately 10 months, and there is a one-year period after that in which the foreclosure sale could be challenged, so the purchaser might not be able to get title insurance during that period. We can use 2 years as the goal, but there needs to be some flexibility to extend that time period under these circumstances.

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From: Kandil, Shereen <Kandil.Shereen@epa.gov>
Sent: Tuesday, June 29, 2021 5:11 PM
To: Haymes, David (DEP) <David.Haymes@dep.nj.gov>; James P. Bruno <jbruno@cq-law.com>; Louis Karagias <Louis.Karagias@law.njoag.gov>; OConnell, Kimberly <OConnell.Kim@epa.gov>; Mellott, Deborah <Mellott.Deborah@epa.gov>; Kratina, Kevin (DEP) <Kevin.Kratina@dep.nj.gov>; Defeo, Frank (DEP) <Frank.Defeo@dep.nj.gov>; Abels, Jeanette <Jeanette.Abels@dep.nj.gov>; susan@mccurrielaw.com; Mayor Alberto Santos <mayor@kearnynj.org>; Saghafi, Farnaz <Saghafi.Farnaz@epa.gov>; Baxter, Pamela <baxter.Pamela@epa.gov>; Kloo, Ken <Ken.Kloo@dep.nj.gov>; Zizila, Frances <Zizila.Frances@epa.gov>
Cc: Wilson, Eric <Wilson.EricJ@epa.gov>; Time Matters <TM@cq-law.com>
Subject: RE: Syncon Resins Superfund Site: EPA Settlement Proposal
Importance: High

Good afternoon,

As you may remember, my name is Shereen Kandil and I am the Community Affairs Team Lead. During this time, I will temporarily assume the role of EPA's Community Involvement Coordinator (CIC) for the Syncon Resins Superfund site. Please don't hesitate to reach out to me directly for any public affairs matters.

We have received DEP's June 11th response to EPA's February 26, 2021 offer. At this time, we respectfully request that the Town of Kearny provide its response to EPA's offer and to the DEP's conditions as outlined below so that we can resume our discussions.

Thank you,
Shereen Kandil

Shereen Kandil

Team Leader, Community Affairs
Public Affairs Office
212-637-4333

Kandil.shereen@epa.gov



U.S. Environmental Protection Agency, Region 2
290 Broadway, 26th Floor
New York, NY 10007

From: Haymes, David (DEP) <David.Haymes@dep.nj.gov>
Sent: Friday, June 11, 2021 12:10 PM
To: Gervacio, Danielle <Gervacio.Danielle@epa.gov>; James P. Bruno <jbruno@cq-law.com>; Louis Karagias <Louis.Karagias@law.njoag.gov>; OConnell, Kimberly <OConnell.Kim@epa.gov>; Mellott, Deborah <Mellott.Deborah@epa.gov>; Kratina, Kevin (DEP) <Kevin.Kratina@dep.nj.gov>; Defeo, Frank (DEP) <Frank.Defeo@dep.nj.gov>; Abels, Jeanette <Jeanette.Abels@dep.nj.gov>; susan@mccurrielaw.com; Mayor Alberto Santos <mayor@kearnynj.org>; Saghafi, Farnaz <Saghafi.Farnaz@epa.gov>; Baxter, Pamela <baxter.Pamela@epa.gov>; Kloo, Ken <Ken.Kloo@dep.nj.gov>; Zizila, Frances <Zizila.Frances@epa.gov>
Cc: Mata, Carsen <Mata.Carsen@epa.gov>; Wilson, Eric <Wilson.EricJ@epa.gov>; Kandil, Shereen <Kandil.Shereen@epa.gov>; Time Matters <TM@cq-law.com>
Subject: RE: Syncon Resins Superfund Site: EPA Settlement Proposal

Good afternoon, Danielle (and everyone else)!

I hope this finds everyone doing well and getting ready for summer (and hopefully a return to some semblance of the old normal).

DEP has reviewed the February 26, 2021 EPA offer (see email below), and accepts the offer with the following two conditions:

1. There is a time-limit to sell the property within two (2) years.
2. The purchaser must assume responsibility for future O&M costs.

Please let me know if you would like to discuss.

Regards,

David

David Haymes, Director
Division of Enforcement, Technical, and Financial Support
Site Remediation & Waste Management Program
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From: Gervacio, Danielle <Gervacio.Danielle@epa.gov>

Sent: Friday, February 26, 2021 03:28 PM

To: James P. Bruno <jbruno@cq-law.com>; Haymes, David <David.Haymes@dep.nj.gov>; Karagias, Louis (LPS) <Louis.Karagias@law.njoag.gov>; Oconnell, Kimberly <OConnell.Kim@epa.gov>; Mellott, Deborah <Mellott.Deborah@epa.gov>; Kratina, Kevin <Kevin.Kratina@dep.nj.gov>; Defeo, Frank <Frank.Defeo@dep.nj.gov>; Abels, Jeanette <Jeanette.Abels@dep.nj.gov>; susan@mccurrielaw.com; Mayor Alberto Santos <mayor@kearnynj.org>; Saghafi, Farnaz <Saghafi.Farnaz@epa.gov>; Baxter, Pamela <baxter.Pamela@epa.gov>; Kloo, Ken <Ken.Kloo@dep.nj.gov>; Zizila, Frances <Zizila.Frances@epa.gov>

Cc: Mata, Carsen <Mata.Carsen@epa.gov>; Wilson, Eric <Wilson.EricJ@epa.gov>; Kandil, Shereen <Kandil.Shereen@epa.gov>; Time Matters <TM@cq-law.com>

Subject: [EXTERNAL] RE: Syncon Resins Superfund Site: EPA Settlement Proposal

Greetings,

EPA has reviewed and considered everyone's position over the course of these negotiations. Based on our review, and in response to the Town's email of February 15th, EPA believes that the following settlement proposal is fair and reasonable to all the parties and will achieve a final resolution of this matter:

Tier 1 - Net proceeds up to \$18M will be split: 70% EPA, 17% Town, 13% DEP

Tier 2 - Net proceeds between \$18M and \$20.5M will be split: 50% EPA, 36% Town, 14% DEP

Tier 3 - Remaining net proceeds above \$20.5M will be split: 55% EPA, 22.5% Town, 22.5% DEP

We look forward to your response with the hopeful intent of moving on to the MOA phase of our discussions.

Sincerely,
Danielle Gervacio

From: James P. Bruno <jbruno@cq-law.com>

Sent: Monday, February 15, 2021 5:15 PM

To: Gervacio, Danielle <Gervacio.Danielle@epa.gov>; Haymes, David <David.Haymes@dep.nj.gov>; Louis Karagias <Louis.Karagias@law.njoag.gov>; Oconnell, Kimberly <OConnell.Kim@epa.gov>; Mellott, Deborah <Mellott.Deborah@epa.gov>; Kratina, Kevin <Kevin.Kratina@dep.nj.gov>; Defeo, Frank <Frank.Defeo@dep.nj.gov>; Abels, Jeanette <Jeanette.Abels@dep.nj.gov>; susan@mccurrielaw.com; Mayor Alberto Santos <mayor@kearnynj.org>; Saghafi, Farnaz <Saghafi.Farnaz@epa.gov>; Baxter, Pamela <baxter.Pamela@epa.gov>; Kloo, Ken <Ken.Kloo@dep.nj.gov>; Zizila, Frances <Zizila.Frances@epa.gov>

Cc: Mata, Carsen <Mata.Carsen@epa.gov>; Wilson, Eric <Wilson.EricJ@epa.gov>; Kandil, Shereen <Kandil.Shereen@epa.gov>; Time Matters <TM@cq-law.com>

Subject: RE: Syncon Resins Superfund Site: EPA Settlement Proposal

After internal review by the Town of the counterproposal described in the email below, we must advise everyone that the Town of Kearny is not in agreement with that counterproposal.

While we recognize that the proposal would provide the Town with a larger allocation if the net sale proceeds are less than \$18M, the continuing increase in the value of warehouse property indicates that the net sale proceeds will likely exceed that amount, and under those circumstances the Town's share would be less than what it would have received under the prior proposal. We do not believe that this is a fair outcome given that the Town's lien for unpaid real estate taxes continues to grow larger as time goes on.

We will consider any alternate proposal that does not decrease the Town's share of the net sale proceeds over \$18M.

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From: Gervacio, Danielle <Gervacio.Danielle@epa.gov>

Sent: Friday, January 22, 2021 1:46 PM

To: Haymes, David <David.Haymes@dep.nj.gov>; Louis Karagias <Louis.Karagias@law.njoag.gov>; OConnell, Kimberly <OConnell.Kim@epa.gov>; Mellott, Deborah <Mellott.Deborah@epa.gov>; Kratina, Kevin <Kevin.Kratina@dep.nj.gov>; Defeo, Frank <Frank.Defeo@dep.nj.gov>; Abels, Jeanette <Jeanette.Abels@dep.nj.gov>; James P. Bruno <jbruno@cq-law.com>; susan@mccurrielaw.com; Mayor Alberto Santos <mayor@kearnynj.org>; Saghafi, Farnaz <Saghafi.Farnaz@epa.gov>; Baxter, Pamela <baxter.Pamela@epa.gov>; Kloo, Ken <Ken.Kloo@dep.nj.gov>; Zizila, Frances <Zizila.Frances@epa.gov>

Cc: Mata, Carsen <Mata.Carsen@epa.gov>; Wilson, Eric <Wilson.EricJ@epa.gov>; Kandil, Shereen <Kandil.Shereen@epa.gov>

Subject: Syncon Resins Superfund Site: EPA Settlement Proposal

Greetings,

My name is Danielle Gervacio and I will be permanently assuming the role of EPA's Community Involvement Coordinator (CIC) for the Syncon Resins Superfund site in the place of my predecessor, Shereen Kandil. I look forward to working with the Town of Kearny and DEP. Below you will find EPA's response regarding settlement of this matter.

The parties have devoted considerable time and effort into this negotiation process. It is evident from this process that the parties and, in particular, EPA and the DEP, have notably different views and legal positions. While we respectfully disagree on a number of issues, there is one issue that we can all agree on: we share a common interest in resolving this complex legal matter and having the site redeveloped and reused. An expeditious resolution is preferable, most importantly for the DEP who has a significant interest in seeing a new owner assume the cost of performing the O&M for the OU1 remedy under DEP oversight.

EPA has conducted an in-depth review of the legal and equitable arguments presented in the DEP's submittal of 9/14/20 and has given consideration to the Town's position as set forth in the Town's email of 10/8/20. While EPA continues to disagree with the State's position, we recognize the need to end these negotiations. So in an effort to finally bring this matter to conclusion, EPA has agreed to make a number of significant concessions on the following disputed issues:

- Second Tier of Recovery: On 2/5/20 and 2/11/20, the Town submitted a settlement proposal that divided the distribution of potential sales proceeds into three tiers of recovery. The second tier was developed to address what the Town and EPA perceive to be an inequity that resulted from DEP's recovery of insurance proceeds in the State's litigation. In addition, the Town accepted a 15% allocation contingent on the potential of realizing a greater recovery in the settlement if the sale proceeds were to exceed \$18M. EPA agreed to the concept of the second tier of recovery because it viewed the DEP's recovery as inconsistent and contrary to the spirit of the EPA consent decree with Benjamin Farber and the cooperative agreement entered into between EPA and the DEP. The DEP does not agree with this view. It is apparent that the parties have reached an impasse on this issue. In order to move forward, EPA is willing to make a significant concession and forgo collecting any proceeds from a second tier of recovery. Given the significant compromise and resulting benefit to the DEP of omitting the second tier of recovery, and taking into consideration the Town's position regarding its allocation contingency, EPA is willing to increase the Town's allocation by 2% to 17% in the first tier. EPA, thus, agrees to reduce its own allocation by 2%.
- DEP's Past Costs and Future O&M: There continues to be disagreement on the amount of DEP's past costs secured by liens on the Site. As with the discussion of the Second Tier of Recovery above, the parties have reached an impasse on this issue as well. While each party believes it has compelling legal and equitable arguments supporting its views, we must respectfully acknowledge and accept our continued disagreement and find a path forward. EPA acknowledges that the DEP has made a concession regarding the issue of recovery of future actual O&M costs upfront and that DEP contends future actual O&M costs should be considered in the same category as EPA's past costs for purposes of the allocation. In order to help resolve this issue, EPA is

willing to offer a further compromise and increase the DEP's allocation by 1% to 13% in the first tier. EPA, thus, agrees to reduce its own allocation by an additional 1%. This compromise is in addition to the benefit that DEP will realize from the compromise omitting the second tier of recovery.

- Settlement Proposal: Under EPA's settlement proposal outlined above, the third tier as discussed in prior settlement correspondence will now become the second tier. Therefore, EPA's settlement proposal with regard to the first \$18M in net proceeds is: 70% to EPA, 17% to the Town of Kearny, and 13% to the DEP. This represents a decrease from EPA's initial allocation of 82% to 70%, a significant compromise. Because EPA has decreased its allocation for the first \$18M in proceeds by a total of 3% as set forth above, in the less likely event that proceeds recovered are greater than \$18M, EPA believes that it is fair and equitable that EPA receive a slightly higher percentage. Therefore, EPA proposes that the proceeds above \$18M be distributed: 55% to EPA, 22.5% to the Town of Kearny and 22.5% to the DEP. EPA notes that under this new second tier, if net proceeds exceed \$18M, the DEP will recover a much higher percentage than it had previously proposed.
- Technical discussion regarding OU1 O&M: The DEP's submittal included a lengthy response to technical issues that have been raised prior to and during the course of these negotiations. EPA believes that it is more efficient to address these technical issues through separate discussions between EPA and DEP without the involvement of the Town or, to the extent practicable, agency attorneys. Certain technical issues may need to be memorialized in the MOA or are reserved to being addressed in the DEP's AOC with the future site owner.

We look forward to your response to this offer.

Kindly,
Danielle Gervacio

Danielle Gervacio
Public Affairs Specialist | Community Involvement Coordinator
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New York, NY